IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 5845/93

Miss Shakuntla Gakhareja

Vs.

State of Rajasthan and Another.

Date of Order : 10/04/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. D.R.Lunkar for the petitioner.
Mr. B.L.Tiwari, Deputy Government Advocate for respondents.

BY THE COURT:-

By the instant writ petition, the petitioner seeks a direction to the respondents to grant seniority to her on the post of L.D.C. w.e.f. 01st March, 1977, the date on which she has joined her duties with all promotional and consequential benefits.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was appointed on the post of L.D.C. by order dated 25.2.1977 Annex.1 on temporary basis with the Social Welfare Department for the period up to 31st March, 1977 or till duly selected person by RPSC is made available whichever is earlier. It appears that on creation of the

posts with the Medical and Health Department of the respondent State with effect from 01.9.1981, the services of the petitioner and others mentioned in the order Annex.3 dated 31.8.1981 were placed with the Medical and Health Department. Vide order Annex.6 dated 31.8.1990, the petitioner and 13 other employees of the Department of Medical and Health Services, Jaipur, Rajasthan, were confirmed from the date of their appointment. In the said order, the petitioner's name figures at serial No.12 showing her date of appointment on the post of L.D.C. 1.9.1981 and as many as 11 persons have been placed above the petitioner who have been confirmed w.e.f. 1.9.1976, 8.3.1978, 24.5.1978, 30.1.1979, 23.5.1979, 23.5.1979, 28.9.1979, 20.2.1980, 28.2.1980, 18.4.1980 and 22.7.1980 respectively.

The respondents have filed a reply to the writ petition stating therein that the petitioner was temporarily appointed for the period up to 31st March, 1977 or till regularly selected person by the RPSC is made available whichever is earlier. It has further been stated that neither the petitioner was declared surplus nor was absorbed as the petitioner has never been placed at the disposal of G.A.D. The respondents came with a case that the petitioner was transferred from Social Welfare Department to Medical and Health Department and therefore, it was nothing but transgession of Medical and Health Department to another department. It has further been stated

that initially the petitioner was appointed temporarily up to 31.3.1977, however, she was appointed in regular manner on the post of LDC w.e.f. 1.9.1981, and thus, the date of substantive appointment of the petitioner on the post of LDC is 1.9.1981. According to Rule 27 of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 (for short 'the Rules of 1957' hereinafter), seniority of persons appointed to the lowest post of the service or lowest categories of posts in each of group/section of the service as the case may be, shall be determined from the date of confirmation of such persons to the said post but in respect of persons appointed by promotion to other higher posts in the service or other higher categories of posts in each of the group/section in the service, as the case may be shall be determined from the date of their regular selection to such posts, and thus, the respondents contended in the reply that the seniority of the petitioner for the purpose of promotion has to be reckoned from the date of substantive appointment under the Rules of 1957 i.e. w.e.f. 1.9.1981. The petitioner was confirmed vide order dated 31.8.1990 w.e.f. 1.9.1981.

I have heard learned counsel for the parties and given my thoughtful consideration to the rival submissions made by the counsel for the parties.

It is contended by learned counsel for the petitioner that the petitioner was appointed temporarily vide order Annex.1

dated 25.2.1977 for the period up to 31.3.1977 or till the person duly selected by the RPSC is made available, but the appointment of the petitioner was by following the procedure prescribed under the Rules and therefore, for the purpose of promotion, the seniority has to be reckoned from the date of initial appointment may be temporary in nature. Learned counsel has relied on a decision of Hon'ble Supreme Court in The Direct Recruit Class-II Engineering Officers' Association and Others Vs. State of Maharashtra and Others, AIR 1990 SC 1607, wherein as per para 44 of the report, Hon'ble Supreme Court held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

According to Rule 27 of the Rules of 1957, seniority of persons appointed to the lowest post of the service or lowest categories of posts in each of group/section of the service as the case may be, shall be determined from the date of confirmation of such persons to the said post. In the instant case, the petitioner was confirmed on the post of LDC with effect from 1.9.1981 and thereafter the petitioner has been promoted to the

post of UDC as stated by the respondent State in the reply, thereafter a final seniority list of the UDC was published in which the name of the petitioner finds place at serial No. 1028. The petitioner at the time of accepting the promotion to the post of UDC and final seniority list, did not question seniority. Learned Deputy Government Advocate submits that as many as 11 persons are placed senior to the petitioner as is evident from Annex.6 and none of the persons senior to the petitioner have been arraigned as party respondents claiming seniority over them. Be that as it may, since Rule 27 of the Rules of 1957 in clear terms provides that seniority of persons appointed to the lowest post of the service or lowest categories of posts in each of group/section of the service as the case may be, shall be determined from the date of confirmation of such persons to the said post and in the instant case, undisputedly, the petitioner came to be confirmed w.e.f. 01.9.1981 and therefore, in my view, the petitioner is not entitled to be assigned seniority from the date of her initial appointment vide Annex.1 which was for a limited period and temporary in nature. The Apex Court in the Direct Recruit Class-II Engineering Officers' Association and Others Vs. State of Maharashtra and Others (supra) has also held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. In the circumstances therefore, in my view, the petitioner is not entitled to the relief prayed for more particularly without impleading the persons over whom the petitioner claims seniority.

The writ petition has no force and it is, therefore, dismissed. No order as to costs.

(H.R.PANWAR),J.

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